

MINUTES OF THE TELEPHONE CONFERENCE
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE

Members
Present

There was a telephone conference held by the Administrative Rules Review Committee on September 28, 1990 at 8:30 a.m. Those participating were: Senator Berl E. Priebe, Chairman; Representative Emil S. Pavich, Vice Chairman; Senators Donald V. Doyle and Dale L. Tieden; Representatives David Schrader, and Betty Jean Clark.

Staff present: Joseph A. Royce, Counsel and Alice Gossett, Administrative Assistant. Also present were Paula Dierenfeld, Governor's Administrative Rules Coordinator; Don Herman, Human Services Department; Paul Romans, Iowa Health Care Association and Stephen Conway, Democratic Caucus Staff Research Analyst.

Chairman Priebe convened the conference at 8:35 a.m. and said the conference was necessitated by the 30-day delay imposed at the September ARRC meeting on ARC 1127A, as published in the 8/8/90 IAB.

Priebe felt that if the delay were lifted, these rules would go into effect. If a budget agreement were not reached in Washington, Gramm-Rudman would go into effect on October 1 automatically. He felt if all these items in the rules were put into effect, there would be as much as \$8 per day increase in costs for residents of a care center.

Herman said the increase on October 1 would be \$3.74.

Priebe commented that if the money was not appropriated and Gramm-Rudman goes into effect, there probably would be a reduction in the \$44 to a possible \$42 because the money will not be there and Gramm-Rudman is "an across-the-board cut on everything."

Herman said the state money is appropriated and that Medicaid is exempt from Gramm-Rudman cut so the money is there at the federal level also, even for the increase. He also advised there were "X" number of dollars appropriated at the state level and at the federal level. Herman also stated that every state was required to submit a budget plan to HCFA by April 1 and the federal government. The Department sent their plans on April 1, so the dollars are budgeted at the federal level.

Priebe was concerned as to whether the budget would be passed. He felt if the budget were not approved on October 1, there would be dollars that were in last year's budget when, actually as of October 1, there would be a deficit because there would be no budget.

Herman reiterated that Gramm-Rudman would not affect the Medicaid dollars, and added that regardless of what happens October 1, the money will be there for the increase. Herman said the federal government has a budget but that budget does not balance and because of that, Gramm-Rudman is scheduled to go into effect, but it will not affect the Medicaid budget.

Clark and Tieden said there was nothing they could do but felt that nursing homes have a problem in that they were already adding staff. The federal government has made such stringent demands on this. Clark thought it was the federal government's problem.

Conway commented that it was his understanding that the federal government passed the budget figures for the new federal fiscal year which begins October 1. Gramm-Rudman would sequester against those figures, not last year's figures. What would be taken away would be a certain percentage from all nonexempt programs, but no funds would be taken away from the dollars that were allocated to Medicaid because that program is exempt under the sequester. A federal budget figure is available for the next fiscal year and Gramm-Rudman would take money away from that based on the new fiscal year dollars, not the old fiscal year dollars.

Priebe said he agrees with Clark and Tieden on lifting the delay, but he does intend to ask for an objection to these rules in the October ARRC meeting. He said he felt the ARRC would have to object to these rules to cover any unexpected problems. Priebe was concerned that as tight as money is at the state level, that there would not be any money if this federal money was not available. He was fearful of voting to put increases on nursing homes that are already having problems and expressed concern about them closing. "Where are we going to go with these people?"

Clark asked if the objection would help the department answer the federal government with a waiver and Priebe responded they would discuss that at the October meeting.

In answer to Doyle, Royce said California is looking for a waiver based on their MediCal program which they argue provides the same functional requirement that is found in the OBRA provisions. Long before OBRA, California was doing many of these things.

Doyle asked Herman if Human Services is in a position to ask for any kind of waiver in the next couple months on these. Herman responded in the negative. He added there are many areas in nursing home reform that Iowa would readily acknowledge that the Department was not already complying with. The only area where it is believed they were close to compliance was on the nurse aide training

because they already had a 60-hour course in place. Outside of that they believe there are new standards with which they must comply.

Royce said he wanted to speak on one point to these rules. At the present time the ARRC has a 30-day delay on these entire rules. There is one portion of the rules dealing with nurse aide requirements that is not a matter of federal law or federal regulation. Those regulations, which appear in 81.16, were taken from a federal manual, not a rule, and so for that reason a delay should be retained on portions of those. One portion of those rules is controversial and that is subrule 81.16(4)--"In-service training." It requires 6 hours of training per quarter--in other words, 24 hours per year and that is double the current requirement. The delay could be retained on that particular provision because it is not subject of federal statute or federal rule.

Priebe asked for a motion that they lift the delay and discuss an objection at the ARRC meeting in October.

Motion

Tieden so moved.

Schrader asked Don Herman if this would be putting the federal Medicaid dollars at risk and would a delay on this portion of the rule still leave this in compliance with the OBRA laws. Herman responded that they do not think delaying that particular section will jeopardize the federal funding.

Motion carried

Royce assured the Committee they could always ask for a Selective Review.

Priebe said he did not want to put the Department in jeopardy but he also did not want to put the budget in any more of a precarious position than it is right now.

Dierenfeld agreed with the action taken.

Herman asked for clarification of the motion.


Royce explained that the delay has been lifted and retained on one portion--subrule 81.16(4) relating to in-service training.

Priebe and Tieden both expressed concern with all of 81.16 but agreed they could not jeopardize the Department's position and would discuss all of this further at the October meeting.

Herman reminded the Committee that the Department is saying they have no problem with delaying 81.16(4).

The meeting was adjourned at 8:55 a.m.

Respectfully submitted,



Alice Gossett, Acting Secretary

Chairman